



THE NASDAQ STOCK MARKET
ONE LIBERTY PLAZA, 50TH FLOOR
NEW YORK, NY 10006

February 28, 2006

Nancy M. Morris, Esquire
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Petition to Amend Rule 146(b) to Designate Securities Listed on the Nasdaq Capital Market as Covered Securities for the Purpose of Section 18 of the Securities Act of 1933

Dear Ms. Morris:

By this petition, The Nasdaq Stock Market, Inc. (“Nasdaq”) requests that the Securities and Exchange Commission (the “Commission”) institute a rulemaking proceeding¹ to amend Rule 146(b)² to designate securities listed on the Nasdaq Capital Market³ (“NCM”) as covered securities for the purpose of Section 18 of the Securities Act of 1933⁴ (the “Securities Act”). Section 18 allows the Commission to designate as “covered securities,” the offering of which are exempt from state regulation, securities that are “listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities” listed on the New York Stock Exchange (“NYSE”), the American Stock Exchange (“AMEX”), or the Nasdaq National Market (“NNM”) (or any successor to such entities) (collectively, the “named markets”).⁵ Nasdaq believes that the listing standards applicable to securities listed on the NCM are substantially similar to, and in many ways exceed, the listing standards applicable to the named markets. Moreover, the failure to designate NCM issues as “covered securities” would

¹ See Securities and Exchange Commission Rules of Practice, Rule 192, 17 CFR 201.192.

² 17 CFR 230.146(b)

³ The Nasdaq Capital Market was previously named The Nasdaq SmallCap Market. For consistency, this Petition refers to the former Nasdaq SmallCap Market as The Nasdaq Capital Market regardless of the name at the time.

⁴ 15 U.S.C. 77r

⁵ In 1998, the Commission, on its own initiative, determined that it had the statutory authority to designate NCM issues as “covered securities.” Securities Act Release No. 7494, 63 FR 3032 (Jan. 21, 1998).

be inconsistent with the Commission's mandate under Section 11A of the Securities and Exchange Act of 1934 (the "Exchange Act") to "assure ... fair competition ... among exchange markets."⁶

Nasdaq notes that this petition is consistent with the recommendations of the Commission's own Advisory Committee on Smaller Public Companies, which has voted to recommend rulemaking to exempt securities listed on the NCM.⁷ And, as discussed below, it is also significant that the Board of Directors of the North American Securities Administrators Association, Inc. ("NASAA") does not oppose this petition.⁸

Background

In 1996, Congress adopted The National Securities Markets Improvement Act of 1996 ("NSMIA")⁹ because "the system of dual Federal and state securities regulation [had] resulted in a degree of duplicative and unnecessary regulation"¹⁰ and "this duplicative regulation tends to raise the cost of capital to American issuers of securities without providing commensurate protection to investors or to our markets."¹¹ NSMIA modified Section 18 of the Securities Act to provide exclusive federal regulation of securities listed on one of the named markets. Further, "in order to avoid competitive disparities, Congress provided the Commission with the discretionary authority to extend similar preemption treatment to" securities listed on another market that has listing standards that are substantially similar to the listing standards of one of the named markets.¹²

When NSMIA was adopted, Congress was well aware of how the states had adopted and enforced their "blue sky" laws. As noted in the Senate Report, "states have exempted from their 'blue sky' regulation securities traded on the New York Stock Exchange, the American Stock Exchange and the National Market System of Nasdaq. The bill codifies these exemptions...."¹³ In fact, while the historic exemptions for the NYSE and Amex were, for the most part, based upon statutes in the different states, the Nasdaq National Market exemption resulted from the execution of a Memorandum of Understanding ("MOU"), which followed lengthy negotiations between NASAA and the NASD. Thereafter, NASAA entered into similar MOU's with respect to certain securities listed on various regional exchanges and the Commission, as noted below, later

⁶ 15 U.S.C. 78k-1(a)(1)(c)(ii).

⁷ See discussion on page 8 in text accompanying footnote 42.

⁸ See discussion on page 8 in text accompanying footnote 43.

⁹ Pub. L. 104-290, 110 Stat. 3416 (1996).

¹⁰ H.R. Conf. Rep. No. 864, 104th Cong., 2d Sess (1996).

¹¹ Id.

¹² Securities Act Release No. 7422, 62 FR 32705 at 32706 (June 17, 1997).

¹³ Senate Rep. No. 293, 104th Cong., 2d Sess. (1996) at 14.

exercised its discretionary authority to designate these same securities as “covered securities.” In view of this history, it is significant that NASAA’s Board does not oppose this petition. We understand that NASAA intends to submit a comment letter to the Commission addressing more generally listing standards across all markets.

Since 1998, the Commission has exercised its discretionary authority to designate as covered securities the securities listed on: (i) Tier I of the Pacific Exchange; (ii) Tier I of the Philadelphia Stock Exchange; (iii) The Chicago Board Options Exchange; and (iv) options listed on the International Securities Exchange (which, together with the named markets, are referred to herein as the “exempt markets”). Further, in 1998, the Commission considered whether it would be appropriate to include securities listed on the NCM as covered securities. While the Commission determined not to exempt NCM securities at that time, in part because certain listing standard changes approved in 1997 would not become effective until later in 1998, the Commission found that “it does appear that the [Capital Market] initial listing standards for common stock are similar to those of the Amex.”¹⁴

Discussion

Capital Market Listing Standards

Since the adoption of NSMIA in 1996, Nasdaq has made numerous enhancements to the listing standards of the NCM. In the aggregate, these changes leave no question that the listing standards on the NCM are substantially similar to those of the named markets.¹⁵ Among the most significant changes are the following:

- Nasdaq staff does not grant waivers to any initial listing standard. Indeed, in 2005, Nasdaq adopted procedural changes to make this transparent, and to further provide that Nasdaq only has very limited discretion to grant temporary exceptions to listing standards.¹⁶ Any such exceptions must be time limited and Nasdaq staff is limited to exceptions of no more than 105 days, which includes time to allow the company to respond and provide its plan to regain compliance.¹⁷ In contrast, the exempt markets have much more liberal authority to waive a listing standard or grant extended exceptions. In fact, staff of both the NYSE and the Amex can grant exceptions as long as 18 months¹⁸ and the Amex permits the

¹⁴ Securities Act Release No. 7494, 63 FR 3032 (Jan. 21, 1998).

¹⁵ To facilitate the Commission’s review, we have attached as Exhibits A and B charts comparing the initial and continued listing standards of the Nasdaq Capital Market with those of the Amex.

¹⁶ Exchange Act Release No. 52342 (Aug. 26, 2005), 70 FR 52456 (Sept. 2, 2005) (approving SR-NASD-2004-125).

¹⁷ See NASD Rule 4803(b).

¹⁸ See Section 802.02 of the NYSE Listed Company Manual and Section 1009(b) of the Amex Company Guide.

- listing of securities that do not satisfy any of the stated core initial listing standards.¹⁹
- In 1997 Nasdaq modified the core quantitative listing standards applicable to companies listed on the NCM.²⁰ As a result, the minimum financial requirement for initial listing was changed from \$4 million in total assets and \$2 million in capital and surplus, to \$4 million in net tangible assets. These changes were not yet in effect when the Commission previously considered whether to designate securities traded on the Capital Market as covered securities.²¹
 - Subsequently, in 2001, Nasdaq again modified this core financial requirement to require \$5 million in shareholders' equity for initial inclusion.²² In contrast, a company may be listed on the Amex with shareholders' equity of \$4 million.²³
 - In 1997 Nasdaq raised the minimum price for initial inclusion on the NCM from \$3 to \$4 and eliminated an alternative to the minimum \$1 bid price requirement for continued listing.²⁴ As a result, today Nasdaq is the only primary market to have a minimum price requirement for the initial and continued listing of all companies. In contrast, the NYSE has no stated price requirement for initial inclusion, and the AMEX can list certain companies with a price as low as \$2.²⁵ Further, the Amex has no stated price requirement for continued listing and, as of January 20, 2006, at least 65 Amex-listed securities, representing approximately 10% of all Amex-listed common stocks and equivalents, are trading at prices below \$1. Recently, the Commission staff encouraged Amex to follow Nasdaq's example and adopt a minimum price requirement for continued listing.²⁶
 - In 2001, Nasdaq imposed a "seasoning" period on companies that qualify for initial listing only under the market value of listed securities standard to prevent

¹⁹ See Section 101(e) and 1203(c) of the Amex Company Guide.

²⁰ Exchange Act Release No. 38961 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997) (approving SR-NASD-1997-16).

²¹ These increased listing standards became effective in February 1998.

²² Exchange Act Release No. 44499 (June 29, 2001), 66 FR 35819 (July 9, 2001) (approving SR-NASD-2001-14).

²³ Section 102 of the Amex Company Guide.

²⁴ Exchange Act Release No. 38961, *supra*.

²⁵ The Amex just recently adopted this minimum \$2 price, half that required for listing on the NCM. Exchange Act Release No. 53050 (Jan. 3, 2006), 71 FR 1580 (Jan. 10, 2006) (approving SR-AMEX-2005-114). Previously, the Amex was able to list certain companies without regard to price. For example, in 2004, a company in the process of being delisted from the NCM for failing to satisfy Nasdaq's \$1 minimum bid price was listed on the Amex without regard to its price.

²⁶ Exchange Act Release No. 53050 at 1581 (footnote 11).

such a company from qualifying based solely on a temporary price increase.²⁷ Thus, these companies must satisfy both the market value of listed securities requirement and the bid price requirement for a period of 90 days before they are even permitted to apply for listing. No such seasoning requirement applies on the Amex.

- When NSMIA was adopted, NCM securities were not subject to any corporate governance requirements for initial or continued listing. This was changed in 1998 and today Nasdaq applies the same stringent corporate governance standards to companies listed on both the NNM and the NCM.²⁸ Thus, among other things, a NCM listed company is required to have a majority of its board comprised of independent directors, and these independent directors must participate in compensation and nomination decisions, as well as serve on the audit committee.²⁹ In addition, these independent directors must review and approve all related party transactions.³⁰ Companies must also adopt a code of conduct satisfying the requirements for a “code of ethics” set out in Section 406(c) of the Sarbanes-Oxley Act of 2002³¹ for all directors, officers and employees.³² Further, shareholders must approve all equity compensation plans,³³ as well as certain other significant transactions.
- In 2002, Nasdaq adopted additional listing requirements relating to preferred stocks.³⁴ These rules require preferred stocks listing on the NCM to have 100 round lot shareholders, 200,000 publicly held shares, and \$2 million market value of publicly held shares.³⁵

²⁷ Exchange Act Release No. 44499 (June 29, 2001), 66 FR 35819 (July 9, 2001) (approving SR-NASD-2001-14). Of course these companies must also satisfy those requirements at the time they are approved for listing and begin to trade.

²⁸ Exchange Act Release No. 38961, *supra*.

²⁹ NASD Rules 4350(c) and 4350(d). *See also* Exchange Act Release No. 48745 (Nov. 4, 2003), 68 FR 64154 (Nov. 12, 2003) (approving SR-NASD-2002-77, SR-NASD-2002-80, SR-NASD-2002-138, SR-NASD-2002-139 and SR-NASD-2002-141, as well as SR-NYSE-2002-33).

³⁰ NASD Rule 4350(h).

³¹ *See* 17 C.F.R. 228.406 and 17 C.F.R. 229.406.

³² NASD Rule 4350(n).

³³ NASD Rule 4350(i)(1)(A). *See also* Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving SR-NYSE-2002-46 and SR-NASD-2002-140).

³⁴ Exchange Act Release No. 46940 (Dec. 3, 2002), 67 FR 72998 (Dec. 9, 2002) (approving SR-NASD-2002-89).

³⁵ These standards apply only when the issuer’s common stock is listed on Nasdaq or a national securities exchange. In situations where an issuer’s common stock is not so listed, the preferred stock would need to meet the higher initial inclusion standards pertaining to common stock.

While Nasdaq has significantly raised the initial and continued listing requirements related to the NCM, those requirements would be ineffective unless they were supported by a rigorous rules enforcement program. In that regard, Nasdaq's discipline in enforcing its listing standards, both on the NNM and the NCM, is unmatched by any other market. From January 1998 until December 2005, Nasdaq delisted over 1,100 companies from the NCM for regulatory reasons. As a result, the average NCM listed company today has a significantly stronger financial profile than in 1998 and compares favorably to companies listed on the other exempt markets.

Nasdaq has, when appropriate, used its broad discretionary authority to deny listing on the NCM to a security that otherwise meets the listing requirements,³⁶ and the Commission recently upheld the exercise of this discretion.³⁷ Based on this discretion, Nasdaq has denied listing to types of companies that certain named markets have welcomed. For example, Nasdaq has refused to list special purpose acquisition companies (so-called "SPACs") because investors in such an offering do not know what it is they are purchasing and because it is not possible to determine whether the company to be acquired will satisfy the quantitative and qualitative listing standards. Notwithstanding this regulatory concern, the Amex has listed such companies.³⁸

Nasdaq also uses its discretion to deny initial listing to a company when an individual with a history of regulatory misconduct is associated with the issuer. To support the use of its discretionary authority, Nasdaq has formed a specialized team, Listing Investigations, whose principal function is to scrutinize disclosures and financial reports and investigate conduct that raises public interest concerns. This team is regularly involved in investigations of companies that have applied for listing, as well as already listed companies, and does so both with respect to NNM and NCM companies. To our knowledge, no other marketplace has dedicated resources to proactively conducting such investigations.

In addition, Nasdaq applies the same strict filing requirements to the NCM as it does to companies listed on the NNM. When any Nasdaq-listed issuer fails to timely file any required financial report with the SEC it receives prompt written notice that it will be delisted unless it files an appeal and requests a hearing within seven business days. This practice is followed with respect to both annual (e.g., Forms 10-K) and interim filings

³⁶ Nasdaq recently amended the rule describing this authority to make it clear that this authority does not provide a basis for granting exceptions from listing criteria. Exchange Act Release No. 52342, *supra*.

³⁷ Fog Cutter Capital Group, Inc., Exchange Act Release No. 52993 (Dec. 21, 2005).

³⁸ For example, on July 1, 2005, Amex listed Courtside Acquisition Corporation. The Amex news release touting the listing describes the company as "a vehicle for the acquisition of an operating business. The target business will not be limited to a particular industry, although it is initially intend [sic] to focus on the entertainment, media and communications industries." This release also quotes Courtside's CEO as saying "[The Company] is honored to be one of the first special purpose acquisition companies to be listed on the American Stock Exchange." July 1, 2005 press release, available at: http://www.amex.com/atamex/news/press/sn_CRB.U_070105.htm.

(e.g., Forms 10-Q). Nasdaq transmits an identifier with the symbol of such companies so that investors know that the issuer is delinquent. And, Nasdaq's web site provides additional notice to investors of all filing delinquencies. If a Nasdaq issuer does file an appeal, hearings with respect to filing delinquencies are scheduled on an expedited basis and typically occur within three weeks. While a Hearing Panel is empowered to afford an issuer a short additional extension, it only does so if the issuer has undertaken specific actions to cure the delinquency; such issuers face delisting if they cannot file within the time specified by the Panel, which cannot exceed 90 days from the date of the Panel's decision. By contrast, the NYSE does not consider whether interim filings are timely made and allows an issuer delinquent in an annual filing twelve months or more to regain compliance.³⁹

Nasdaq's continued listing enforcement program for the NCM (as well as the NNM) sits atop a sophisticated, proprietary, web-based system, which is used to monitor issuer compliance. This system receives a nightly data feed of reports filed with the SEC by Nasdaq-listed companies and evaluates the financial data contained in those reports, along with market data, to determine each company's compliance with the continued listing standards. Alerts are then generated to help the staff prioritize filing reviews and process compliance concerns in a timely manner. This system also enables staff to track issuer compliance with Nasdaq's qualitative, corporate governance listing requirements.

It is also important to note that Nasdaq's rules enforcement program is very transparent. To the extent practicable, Nasdaq applies bright-line, objective listing requirements. In addition, to assist issuers in understanding how these rules are interpreted and applied, Nasdaq has posted over 200 frequently asked questions on the Nasdaq legal and compliance web site, as well as summaries of decisions of the Nasdaq Listing and Hearing Review Council and summaries of staff interpretive letters concerning the application of corporate governance rules. As previously noted, and consistent with the transparency of Nasdaq's listing process, Nasdaq staff has no discretion to waive the application of an initial listing requirement and has extremely limited discretion to grant temporary exceptions to the continued listing requirements. Nasdaq maintains a list, updated daily, of all companies that have been notified by Nasdaq that they fail to meet a continued listing standard, including those that have received an exception. This list identifies the company, describes the standard with which the company does not comply, and indicates the date on which the company was notified about this deficiency.

Effect on Competition

Section 11A of the Exchange Act requires that there be fair competition among exchange markets and between exchange markets and markets other than exchange markets to further the public interest and protection of investors. The lack of a blue sky

³⁹ Rule 802.01E of the NYSE Listed Company Manual. In SR-NYSE-2005-75, the NYSE modified its prior rules to allow exceptions longer than 12 months.

exemption for the NCM clearly impedes competition today. In certain situations, issuers that are qualified to list on the NCM have chosen instead to list on another venue solely because that venue offers a blue sky exemption, even though they have indicated a preference to list on the NCM. In addition, companies listed on the NCM have on occasion sought to dually list on one of the exempt markets solely to avail themselves of that market's exemption.

This competitive disparity will only worsen once the NYSE completes its merger with Archipelago, because securities listed on Tier I of the Archipelago Exchange are considered covered securities, through its relationship with the Pacific Stock Exchange. Indeed, the NYSE has trumpeted its intention to compete with Nasdaq for the listing of smaller companies.⁴⁰ Once this merger closes, Nasdaq will be the only major listing venue that will not be able to offer a blue-sky exemption for smaller companies. Given that the listing standards on the NCM are substantially similar to, if not higher than, the named markets, there is no basis for this disparate treatment.

It is significant to note that today approximately 39% of companies listed on the NCM have transferred from the NNM, where they had a blue sky exemption. Further, the average profile of companies on the NCM appears not just substantially similar to, but in fact stronger than, the average Amex-listed company. The average Nasdaq Capital Market issuer was larger than the average Amex issuer in net income (\$8.4 million vs. \$7.2 million), equity (\$174.4 million vs. \$88.3 million), total assets (\$612.0 million vs. \$261.1 million), total revenue (\$410.3 million vs. \$243.0 million), and market value (\$364.5 million vs. \$342.3 million).⁴¹

Investor Protection

Today, in the absence of a blue sky exemption for securities listed on the Capital Market, state regulators review offerings made by Capital Market issuers. In view of NASAA's unique perspective and expertise in regulating capital formation by smaller public companies and in protecting the interests of investors nationwide, Nasdaq raised this issue with the NASAA Board of Directors prior to filing this petition. Based in part on the strength and quality of Nasdaq's rules and enforcement program, the NASAA Board determined not to oppose this petition. This chronology was noted recently by Jack E. Herstein, an observer representing the interests of NASAA, during an open meeting of the Advisory Committee on Smaller Public Companies.⁴² As noted above, NASAA has played a vital historic role in the evolution of marketplace exemptions, and we believe the Commission should give great weight to its determination.

⁴⁰ See, e.g., John Thain interview with Business Week, December 8, 2005.

⁴¹ Based on an analysis of common stock issues as of January 2006.

⁴² Record of Proceedings, Meeting of Securities and Exchange Commission Advisory Committee on Smaller Public Companies, Wednesday, December 14, 2005 at 145-46, available at: <http://www.sec.gov/info/smallbus/acspc/acspctranscript121405.pdf>.

In addition, the Commission's own Advisory Committee on Smaller Public Companies has recommended the designation of securities listed on the Capital Market as "covered securities" in its preliminary recommendations.⁴³ This Committee is specifically charged with assessing the current regulatory system for smaller companies and making recommendations to the Commission, with "a view to furthering the Commission's investor protection mandate, considering whether the costs imposed by the current system are proportionate to the benefits, identifying methods of minimizing costs and maximizing benefits, and facilitating capital formation by smaller companies."⁴⁴ In regard to the Committee's recommendations, however, it is important to note that Nasdaq is not seeking an exemption for securities quoted on the OTCBB.

Conclusion

The NCM has changed dramatically, and for the better, in the time since Congress first enacted NSMIA and the Commission last looked at this exemptive question. As demonstrated above, today the listing standards of the Nasdaq Capital Market are clearly "substantially similar" to those of the named markets and are supported by an effective, rigorous regulatory program. But for the size of the companies listed there, companies on the NCM are regulated identically to those listed on the NNM. Approving this petition will only serve to protect the interests of investors, since it would encourage more issuers to list on a market characterized by high listing standards and superior regulation and promote competition among markets.

Were the Commission on the other hand to reject this petition, it would only serve to exacerbate an unfair existing competitive disparity among marketplaces, which would be contrary to the Exchange Act.

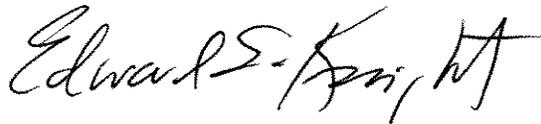
For these reasons, we respectfully petition the Commission to amend Rule 146(b) to designate securities listed on the NCM as covered securities. This action will establish parity between the NCM and the other exempt marketplaces and will eliminate an unfair impediment to competition.

⁴³ Id at 161-62. See also Preliminary Recommendations Proposed by the Capital Formation Subcommittee of the SEC Advisory Committee on Smaller Public Companies, December 7, 2005, Recommendation 5(d), available at <http://www.sec.gov/info/smallbus/acspc/pr-capformation.pdf>; Draft Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission, Draft of February 14, 2006, Recommendation IV.S.11, pages 91-93, available at: http://www.sec.gov/info/smallbus/acspc/acspc-finalreport_d.pdf.

⁴⁴ Article B of the Charter of the United States Securities and Exchange Commission Advisory Committee on Smaller Public Companies (March 23, 2005). Available at: <http://www.sec.gov/rules/other/acspc-charter.pdf>.

If you have any questions, or if we can provide any additional information that would be helpful to the Commission or its staff, please feel free to call me.

Sincerely,

A handwritten signature in black ink that reads "Edward S. Knight". The signature is written in a cursive style with a large, stylized "K" at the end.

Edward S. Knight
Executive Vice President and General Counsel

Attachments

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth
Mr. Martin Dunn, Acting Director, Division of Corporation Finance
Mr. Robert L.D. Colby, Acting Director, Division of Market Regulation
Mr. Gerald Laporte, Chief, Office of Small Business Policy, Division of Corporation
Finance
Ms. Patricia Struck, President, NASAA; Administrator, Division of Securities,
Wisconsin Department of Financial Institutions
Ms. Denise Voigt Crawford, Securities Commissioner, Texas

Exhibit A
Comparison of Initial Listing Requirements

	The NASDAQ Capital Market	The American Stock Exchange <i>Standard 1 (1)</i>	The American Stock Exchange <i>Standard 2</i>	The American Stock Exchange <i>Standard 3</i>	The American Stock Exchange <i>Standard 4</i>	The American Stock Exchange <i>Listing Qualifications Panel Alt. A</i>	The American Stock Exchange <i>Listing Qualifications Panel Alt. B</i>
Issuer Requirements							
Financial	\$5 million stockholders' equity OR \$50 million market value listed securities OR \$750,000 net income from continuing operations (1)	\$4 million stockholders' equity AND \$750,000 pre-tax income (2)	\$4 million stockholders' equity	\$4 million stockholders' equity AND \$50 million total market capitalization	\$75 million total market capitalization OR \$75 million total assets and revenue (1)	\$3 million stockholders' equity AND \$500,000 pre-tax income (1)	\$3 million stockholders' equity
Operating History	1 year (2)	n/a	2 years	n/a	n/a	n/a	2 years
Corporate Governance	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Issue Requirements							
Liquidity	300 <u>round lot</u> shareholders AND 1 million PHS	800 shareholders AND 500,000 PHS - OR - 400 shareholders AND 1 million PHS - OR - 400 shareholders AND 500,000 PHS AND 2,000 shares ADTV	800 shareholders AND 500,000 PHS - OR - 400 shareholders AND 1 million PHS - OR - 400 shareholders AND 500,000 PHS AND 2,000 shares ADTV	800 shareholders AND 500,000 PHS - OR - 400 shareholders AND 1 million PHS - OR - 400 shareholders AND 500,000 PHS AND 2,000 shares ADTV	800 shareholders AND 500,000 PHS - OR - 400 shareholders AND 1 million PHS - OR - 400 shareholders AND 500,000 PHS AND 2,000 shares ADTV	600 shareholders AND 400,000 PHS - OR - 300 shareholders AND 800,000 PHS	600 shareholders AND 400,000 PHS - OR - 300 shareholders AND 800,000 PHS
Price	\$4	\$3	\$3	\$2	\$3	\$2	\$2
Market Value of Publicly Held Shares	\$5 million	\$3 million	\$15 million	\$15 million	\$20 million	\$2 million	\$10 million
Market Makers	3	n/a	n/a	n/a	n/a	n/a	n/a
Notes PHS = Publicly Held Shares ADTV = Average Daily Trading Volume	(1) In the last fiscal year or two of the last three fiscal years. (2) Not required for companies relying on the \$50 million market value of listed securities alternative.	(1) The basic criteria for listing on Tier I of ArcaEX (formerly the Pacific Exchange) and Tier I of the Philadelphia Stock Exchange are substantially the same as this standard, except these other markets require a \$5 price. (2) In the last fiscal year or two of the last three fiscal years. For initial inclusion under the basic criteria on Tier I of the Philadelphia Stock Exchange, the company must also have \$400,000 in net income.			(1) In the last fiscal year or two of the last three fiscal years.	(1) In the last fiscal year or two of the last three fiscal years.	

Exhibit B
Comparison of Continued Listing Requirements

	The NASDAQ Capital Market	The American Stock Exchange
Issuer Requirements		
Financial	\$2.5 million stockholders' equity OR \$35 million market value listed securities OR \$500,000 net income from continuing operations	\$2 million stockholders' equity (1) OR \$4 million stockholders' equity (2) OR \$6 million stockholders' equity (3) OR \$50 million market capitalization (4)
Corporate Governance	Yes	Yes
Issue Requirements		
Liquidity	300 <u>round lot</u> shareholders AND 500,000 PHS	300 shareholders AND 200,000 PHS
Price	\$1	NONE
Market Value of Publicly Held Shares	\$1 million	\$1 million
Market Makers	2	n/a
Notes PHS = Publicly Held Shares ADTV = Average Daily Trading Volume		(1) With losses from continuing operations or net losses in two of the last three fiscal years. (2) With losses from continuing operations or net losses in three of the last four fiscal years. (3) With losses from continuing operations or net losses in five of the most recently completed fiscal years. (4) With 1.1 million PHS with a market value of \$15 million, and 400 shareholders.